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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

DRODGE, JOSEPH W

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HELMUT JERG

Appeal 2009-012356
Application 10/603,531
Technology Center 1700

Before CHARLES F. WARREN, PETER F. KRATZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Applicant appeals to the Board from the decision of the Primary Examiner finally rejecting claims 8, 10-12, 14, and 16-20 in the Office Action mailed May 10, 2007. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2007).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

We reverse the decision of the Primary Examiner.

Claim 1 illustrates Appellant's invention of a filter, and is representative of the claims on appeal:

8. A filter, comprising:

a filter body having a plurality of filter openings for filtering a medium flowing through said openings; and

each of said openings being screened or covered by elements whose state relative to said filter openings vary [sic] under the influence of the heat of said medium flowing through said openings.

Appellant requests review of the ground of rejection under 35 U.S.C. § 103(a) advanced on appeal by the Examiner: claims 8 and 14 over Alabaster (US 3,122,148). Br. 5;² Ans. 4.

Opinion

We have thoroughly reviewed the respective positions advanced by Appellant and the Examiner. In so doing, we concur with Appellant that the Examiner has failed to establish that the claimed filter encompassed by claims 8 and 14 would have been obviousness to one of ordinary skill in the art over Alabaster. Accordingly, we will not sustain the ground of rejection advanced on appeal. We add the following for emphasis.

The plain language of representative claim 1 specifies a filter comprising at least, among other things, a plurality of filter openings *in a filter body* for filtering a medium flowing through the filter openings, wherein each of the filter openings in the filter body is screened or covered by elements. *See generally* Spec. Claim 14, drawn to a dishwashing

² We considered the Appeal Brief filed December 8, 2008, and the Examiner's Answer mailed January 30, 2009.

machine comprising at least, among other things, a filter, contains the same language.

We find that one of ordinary skill in this art would have found that the medium to be filtered flows through openings in mesh material 9 that constitutes the body of Alabaster's filter bag attached to wire frame 3, 4, 5. Alabaster, e.g., col. 3, ll. 27-53, and Fig. 2. Alabaster would have disclosed that the wire frame holds the bag open, forming throat 10, and provides form to the mesh filter bag, thus holding the bag away from baffles 12, restricting the cross section of the bag, and permitting the bag to flex in response to the movement of baffle 24, reducing the width of the throat. Alabaster, e.g., col. 3, l. 67 to col. 4, l. 35, and Figs. 4-6.

On this record, we agree with Appellant that the Examiner erred in determining that throat 10 of Alabaster's mesh filter bag is a filter opening in the body of the filter bag as claimed in claims 8 and 14. Ans. 4-9; Br., e.g., 6-7.

Accordingly, in the absence of a case of obviousness established by the Examiner, we reverse the ground of rejection of claims 8 and 14 under 35 U.S.C. § 103(a) over Alabaster.

The Primary Examiner's decision is reversed.

REVERSED

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